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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/081,010	02/15/2002	Philippe Maria Margaron	273012011800	1251
25225 7590 12/09/2010 MORRISON & FOERSTER LLP 12531 HIGH BLUFF DRIVE SUITE 100 SAN DIEGO, CA 92130-2040				
EXAMINER FAY, ZOHREH A				
ART UNIT 1627		PAPER NUMBER		
NOTIFICATION DATE 12/09/2010		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

EOfficeSD@mofo.com

Office Action Summary

Application No.

10/081,010

Applicant(s)

MARGARON ET AL.

Examiner

ZOHREH A. FAY

Art Unit

1627

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 November 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12, 15, 16, 19-32, 37, 44 and 45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12, 15, 16, 19-32, 37, 44 and 45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 5, 2010 has been entered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein

were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-12, 15, 16, 19-32, 37, 44 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 98/34644 in view of Chen (US Patent 6,602,274).

The WO Patent teaches the use of reducing inflammation. The above reference teaches the steps of 1) bringing the injured tissues or "pre-injured tissues" with a photosensitizing agent capable of penetrating into the tissue 2) exposing the tissue to the light having wave length absorbed by photosensitizing agent for a time sufficient to reduce or prevent the inflammation. See the abstract and pages 20-28. The above reference differs from the claimed invention in reducing inflammation in tissues exposed to photodynamic therapy and the tissues that overlap with the tissues that have been treated with normal dose PDT. Chen teaches the damage to normal tissue in the path of photosensitizer. The normal tissue in the path of the beam will likely to be activated and causes collateral normal skin damage. See column 1, lines 57-67, column 2, lines 35-47 and column 3, lines 1-10. The above reference makes clear that photodynamic therapy can cause damage to the normal tissues surrounding or adjacent to the target tissue.

One skilled in the art would have been motivated to employ the teachings of the above reference, since it relates to the use of normal dose photodynamic therapy for the

prevention or reduction of inflammation in general in injured and pre-injured tissues. To treat inflammation arising from photodynamic therapy or any other source, using low dose photodynamic therapy taught by the prior art, as an anti-inflammatory agent would have been obvious to a person skilled in the art in the absence of evidence to the contrary. Applicant has presented no evidence to establish the unexpected or unobvious nature of the claimed invention, and as such, claims 1-12, 15, 16, 19-32, 37, 44 and 45 are properly rejected under 35 U.S.C. 103.

. Applicant's arguments and remarks have been carefully considered, but are not deemed to be persuasive. Applicant in his remarks argues that the claims as amended require the target tissue or treatment area is exposed to a total light dose that is higher than the low dose PDT indicated by the WO Patent 98/34644. Applicant goes on by saying that one of skill in the art would not have had a reasonable expectation of success that the instantly claimed methods would be effective to reduce or prevent inflammation in treated subject. The arguments have been noted. It is the examiner's position that claims 1 and 31 are not directed to any specific PDT does and specific irradiation. Furthermore, the prior art also uses the low does photodynamic therapy on injured tissues, which have also been exposed to photodynamic therapy. Therefore, the prior art teaches the use of a low dose light on a target tissue, which produces a total light dose greater than the low dose. The irradiation at the light doses of up to 100 J/cm² is described by the prior art, which reads on the irradiation claimed in claims 44 and 45.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ZOHREH A. FAY whose telephone number is (571)272-0573. The examiner can normally be reached on Monday to Friday 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on (571) 272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ZF
/Zohreh A Fay/
Primary Examiner, Art Unit 1627